

AMENDED IN SENATE JULY 1, 2011

AMENDED IN SENATE JUNE 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 418

Introduced by Assembly Member Ammiano

February 14, 2011

An act relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 418, as amended, Ammiano. Tidelands and submerged lands: City and County of San Francisco: Pier 70.

Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act, and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

This bill would authorize the State Lands Commission to approve an exchange of trust lands within the Pier 70 area, as defined, subject to specified conditions. The bill would provide that lands exchanged out of the trust are free from the requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, and lands to be exchanged are subject to the requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement.

The bill would provide that the precise boundaries of the lands to be taken out of the trust and the lands to be put into the trust pursuant to the exchange shall be determined by the Port of San Francisco, subject

to the approval of the commission. All lands exchanged into the public trust shall be held by the Port of San Francisco.

This bill would authorize the use or lease of historic buildings situated on trust lands for purposes not otherwise consistent with the public trust or the Burton Act trust if specified requirements are met.

This bill would make legislative findings and declarations as to the necessity of a special statute for Pier 70 in the City and County of San Francisco.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The following definitions apply for purposes of
2 this act:
- 3 (a) “AC34” means the 34th America’s Cup.
4 (b) “AC34 events” means the AC34 sailing regatta and related
5 events described in the host agreement.
6 (c) “BCDC” means the San Francisco Bay Conservation and
7 Development Commission established under Section 66620 of the
8 Government Code.
9 (d) “Burton Act” means Chapter 1333 of the Statutes of 1968,
10 as amended.
11 (e) “Burton Act transfer agreement” means that certain
12 agreement dated January 24, 1969, between the state and the city,
13 relating to the transfer of the Port of San Francisco from the state
14 to the city, and any amendments to that agreement in accordance
15 with its terms.
16 (f) “Burton Act trust” means the statutory trust imposed by the
17 Burton Act, and any additional restrictions on use and alienability
18 created by the Burton Act transfer agreement.
19 (g) “City” means the City and County of San Francisco, a charter
20 city and county, and includes the port.
21 (h) “Commission” means the State Lands Commission.
22 (i) “Event Authority” means the America’s Cup Event Authority,
23 LLC.
24 (j) “Harbor fund” means the separate fund in the treasury of the
25 city established and maintained in accordance with Section B6.406
26 of the charter of the city and Section 4 of the Burton Act.

1 (k) “Historic buildings” means those buildings that have been
2 designated as, or meet the standards for, resources contributing to
3 the historic significance of the Pier 70 Historic District under
4 federal law.

5 (l) “Host agreement” means the Host and Venue Agreement
6 between the Event Authority and the city setting forth certain
7 conditions, including completion of environmental review under
8 the California Environmental Quality Act (Division 13
9 (commencing with Section 21000) of the Public Resources Code),
10 under which the city will act as host city for AC34 events.

11 (m) “Lease” means a ground lease or space lease of real
12 property, license agreement for use of real property, temporary
13 easement, right-of-way agreement, development agreement, or
14 any other agreement granting to any person any right to use,
15 occupy, or improve real property under the jurisdiction of the port.

16 (n) “Master plan” means the Pier 70 Preferred Master Plan
17 published by the port in April 2010.

18 (o) “Person” means any private person, corporation, limited
19 liability company, partnership, joint venture, business entity,
20 business trust, association or other private organization or private
21 entity, or any governmental entity or agency.

22 (p) “Pier 70 area” means the approximately 69-acre site owned
23 by the port commonly known as the Pier 70 area.

24 (q) “Port” means the Port of San Francisco, acting by and
25 through the San Francisco Port Commission.

26 (r) “Public trust” means the common law public trust for
27 commerce, navigation, and fisheries.

28 (s) “San Francisco waterfront” means those lands placed by the
29 city under the management, supervision, and control of the port.

30 (t) “Seawall lot 330” means that certain parcel of real property
31 more particularly described as ____.

32 (u) “Secretary’s Standards” means the United States Secretary
33 of the Interior’s Standards for the Treatment of Historic Properties
34 with Guidelines for Preserving, Rehabilitating, Restoring and
35 Reconstructing Historic Buildings.

36 (v) “Senate Bill 815” means Chapter 660 of the Statutes of 2007,
37 as amended.

38 (w) “State” means the State of California.

39 (x) “Team” means the Oracle Racing Team, successor to the
40 BMW Oracle Team, and its successors.

1 (y) “Tidelands” means tide and submerged lands.

2 (z) “Trust” means the public trust or the Burton Act trust, or
3 both, as appropriate in the context of its use.

4 (aa) “Trust lands” means all lands, including tidelands, within
5 the Pier 70 area that are presently subject to the trust. Following
6 a trust exchange, trust lands shall include all lands within the Pier
7 70 area that have been impressed with the trust by the exchange,
8 and shall not include any lands that have been removed from the
9 trust by the exchange.

10 (ab) “Trust termination lands” means all lands within the Pier
11 70 area that will not be subject to the trust following a trust
12 exchange.

13 (ac) “Venue” means a site under port jurisdiction that is subject
14 to the public trust and that is proposed to be used for AC34 events.

15 (ad) “Waterfront land use plan” means the Port of San Francisco
16 Waterfront Land Use Plan, including the waterfront design and
17 access element, adopted by the port in 1997 under Resolution No.
18 97-50, as amended from time to time.

19 SEC. 2. The Legislature finds and declares all of the following:

20 (a) The purpose of this act is to facilitate the productive reuse
21 of the lands within the Pier 70 area of San Francisco in a manner
22 that furthers the purposes of the trust. To effectuate this purpose,
23 this act approves and authorizes the commission, subject to the
24 requirements of this act, to carry out an exchange of lands that will
25 place or confirm the public trust or the Burton Act trust on lands
26 within the Pier 70 area with substantial value for the trust, and
27 terminate the public trust and the Burton Act trust in Pier 70 area
28 lands that no longer are useful for trust purposes.

29 (b) The Pier 70 area is one of the most important intact maritime
30 industrial complexes west of the Mississippi. It is the oldest
31 continuously operating shipyard on the west coast. For over 150
32 years, some portion of the Pier 70 site has been in use for
33 shipbuilding and repair, steel production, and supporting heavy
34 industrial uses. With the arrival of the Union Iron Works in the
35 1880s, the site became a major national and international
36 shipbuilding center, launching, for example, the first steel-hulled
37 ship built on the Pacific Rim. The shipyard at Pier 70, later acquired
38 by the Bethlehem Steel Corporation, built both merchant ships and
39 warships, and was a major supplier for the United States Navy
40 during the Spanish-American War and both world wars. Its

1 development was a key step in the spread of industrialization to
2 the Pacific Coast.

3 (c) The Pier 70 area is within the jurisdiction of the port.
4 Preserving the Pier 70 area's historic resources is one of the port's
5 goals in its waterfront land use plan. In furtherance of that goal,
6 the port has prepared an application to list the Pier 70 area on the
7 National Register of Historic Places and is working with applicable
8 regulatory agencies to prepare a plan to remediate, if necessary,
9 any hazardous substances affecting the Pier 70 area. The master
10 plan incorporates historic preservation and remediating
11 environmental conditions as key objectives for development of
12 the Pier 70 area.

13 (d) The Pier 70 area includes lands that were historically
14 tidelands subject to the public trust as well as historic uplands that
15 were not subject to the public trust. Beginning in 1868, certain
16 Pier 70 area tidelands were conveyed into private ownership by
17 the state pursuant to various state statutes. Portions of those
18 tidelands were subsequently filled and reclaimed. The public trust
19 status of portions of the reclaimed tidelands within the Pier 70
20 area, as well as certain adjacent submerged lands, is uncertain.
21 Due to various historical circumstances, some of the reclaimed
22 tidelands, including lands located well inland from the current
23 shoreline, may have remained subject to the public trust, while
24 other lands, including reclaimed tidelands, lands along the
25 shoreline, and adjacent submerged lands, may have been freed
26 from the trust.

27 (e) The port acquired portions of the Pier 70 area lands,
28 including portions of the historic uplands, as part of the state's
29 grant to the city under the Burton Act. The port acquired the
30 remainder of the Pier 70 area lands from private owners.

31 (f) Absent a trust exchange, substantial portions of the lands
32 within the Pier 70 area that are located along the waterfront or are
33 otherwise of high value to the trust could be sold into private
34 ownership, cut off from public access, and used for purposes
35 inconsistent with the trust. In addition, certain interior lands not
36 useful for trust purposes would be restricted by the trust and could
37 not be used for nontrust uses essential to the revitalization of the
38 Pier 70 area.

39 (g) This act is necessary for the successful revitalization of the
40 Pier 70 area and to realize the resulting public benefits, including

1 continued operation of the existing ship repair yard on
2 approximately 15 acres of the Pier 70 area, the elimination of
3 blight, the remediation of hazardous substances, the establishment
4 of a Pier 70 National Register Historic District and adaptive reuse
5 of approximately 700,000 square feet of historic buildings, the
6 construction of approximately 3,000,000 square feet of new infill
7 development compatible with the historic district predominantly
8 for job-creating uses such as office and technology space, providing
9 some 6,000 to 8,000 new jobs, the creation of approximately 11
10 acres of waterfront open space and an additional nine acres of
11 internal open space, and increased public access to the waterfront.
12 This legislation is also needed to improve the configuration of the
13 trust lands in furtherance of trust purposes.

14 (h) A trust exchange pursuant to this act would result in the
15 configuration of trust lands that maximizes the overall benefits to
16 the trust, without interfering with trust uses or purposes by
17 impressing the entire waterfront within the Pier 70 area, as well
18 as certain interior lands that have high trust values, with the trust
19 and removing from the trust lands that have been cut off from
20 navigable waters, are no longer needed or required for the
21 promotion of the trust, and constitute a relatively small portion of
22 the granted lands within the city. This act requires the commission
23 to ensure that the lands added to the trust by the exchange have a
24 monetary value equal to or greater than the monetary value of the
25 lands taken out of the trust.

26 (i) The State Office of Historic Preservation has reviewed the
27 port's draft application for listing the Pier 70 area on the National
28 Register of Historic Places and the establishment of the Pier 70
29 Historic District, and has preliminarily concurred with the port's
30 conclusion that several buildings in the Pier 70 area are contributors
31 to the proposed historic district. These historic buildings are located
32 throughout the Pier 70 area. They convey a sense of the Pier 70
33 area's early maritime industrial history and enhance the open-space
34 experience in the corridor leading to the waterfront, but are in
35 seriously dilapidated condition. These maritime-related historic
36 buildings are resources of statewide importance, and their
37 preservation and restoration benefits the statewide public and
38 furthers trust purposes by providing maritime-related education
39 about the historic resources and their contribution to the maritime
40 industry, and providing public access to view the historic

1 architectural amenities. This act authorizes uses of historic
2 buildings located on trust lands that support preservation and
3 restoration of the buildings, maritime-related education, and public
4 access to view these historic resources, including uses that would
5 not otherwise be consistent with the trust, subject to the
6 requirements of this act. This act also provides that historic
7 buildings situated on trust termination lands, for so long as the
8 buildings remain in port ownership and retain their integrity as
9 historic resources, should continue to be managed by the port as
10 trust assets and historic resources of statewide importance
11 providing maritime-related education and public access.

12 (j) The successful development and revitalization of the Pier 70
13 area requires that land use planning, infrastructure development,
14 and management and control of the site as a whole be integrated.
15 Both the trust lands and trust termination lands within the Pier 70
16 area will be served by common streets, utilities, and other
17 infrastructure and public facilities that will need to be constructed
18 or improved as part of the development of the Pier 70 area.
19 Preserving the historic district will similarly require investment in
20 buildings on both trust lands and trust termination lands. In
21 addition, the port anticipates substantial investment in the trust
22 lands from nontrust sources, including lease revenues from the
23 trust termination lands, infrastructure financing district tax
24 increment funds, and park improvements funded by city general
25 obligation bonds. In light of these unique circumstances, it is in
26 the best interest of the state and the trust to allow the port to
27 continue to hold and manage the trust termination lands as an asset
28 of the trust, free of public trust and Burton Act trust use restrictions;
29 to require that all revenues or other proceeds generated by the port
30 from the trust termination lands be deposited in the harbor fund;
31 and to permit the use of harbor fund moneys on the trust
32 termination lands to enhance the value to the trust of the trust asset,
33 subject to the limitations set forth in this act.

34 SEC. 3. (a) The commission is authorized to approve an
35 exchange of trust lands within the Pier 70 area that meets the
36 requirements of this act.

37 (b) The commission may not approve the exchange of the trust
38 lands unless it finds all of the following:

39 (1) The portions of the trust lands or interests in lands to be
40 exchanged out of the trust have been filled and reclaimed, are cut

1 off from access to the waters of San Francisco Bay, and are no
2 longer in fact tidelands or navigable waterways, are relatively
3 useless for public trust purposes, and constitute a relatively small
4 portion of the granted lands within the city.

5 (2) The lands or interests in land to be impressed with the trust
6 have a monetary value equal to or greater than the monetary value
7 of the lands or interests in lands to be exchanged out of the trust.
8 If the lands or interests in lands to be exchanged into the trust are
9 insufficient to meet the requirement of equal or greater monetary
10 value, the commission may consider a deposit of funds into the
11 Land Bank Fund established pursuant to Section 8610 of the Public
12 Resources Code to be held solely for acquisition of property, in
13 an amount at least equal to the difference in value, of purposes of
14 making the funding required by this paragraph. If the lands or
15 interests in lands to be exchanged into the trust exceed what is
16 necessary to meet the requirement ~~or~~ of equal or greater monetary
17 value, the lands not needed to meet the requirement may be used
18 to satisfy, in whole or in part, the requirement of subdivision (e)
19 of Section 9 of this act.

20 (3) No substantial interference with trust uses and purposes,
21 including public rights of navigation and fishing, will ensue by
22 virtue of the exchange.

23 (4) The lands or interests in lands impressed with the trust will
24 provide a significant benefit to the trust and are useful for the
25 particular trust purposes authorized by this act.

26 (5) The configuration of trust lands within the Pier 70 area, upon
27 completion of the exchange, consists solely of lands suitable to be
28 impressed with the trust.

29 (6) The appropriate state agencies have approved an
30 environmental site investigation and risk assessment of the Pier
31 70 area, and agree on subsequent actions and development
32 standards needed to ensure appropriate management of potential
33 risks through development of a risk management plan, a remedial
34 action plan, or comparable regulatory documents specific to the
35 conditions at the Pier 70 area, and the port has provided adequate
36 financial assurances to ensure performance of any affirmative
37 remedial actions required by any such a plan or comparable
38 regulatory document; and sufficient liability measures that protect
39 the state will be in place upon completion of the exchange.

1 (7) The final layout of streets in the Pier 70 area shall provide
2 access to the trust lands and be consistent with the beneficial use
3 of the trust lands.

4 (8) Streets and other transportation facilities located on trust
5 lands shall be designed to be compatible with the trust and to serve
6 primarily trust purposes of access to shoreline improvements and
7 shoreline circulation rather than serving nontrust purposes.

8 (9) The San Francisco Port Commission and the city's board of
9 supervisors have approved the exchange.

10 (10) Any surveys or legal descriptions required for the parcels
11 in conjunction with the exchange shall be approved by the
12 commission or its executive officer.

13 (11) The exchange otherwise complies with the requirements
14 of this act.

15 (12) The exchange is consistent with and furthers the purpose
16 of the public trust, the Burton Act trust, and this act.

17 (13) The exchange is otherwise in the best interest of the
18 statewide public.

19 (c) The commission may impose additional conditions on the
20 exchange authorized by this act if the commission determines that
21 these conditions are necessary to protect the public trust. Those
22 conditions may include a requirement that, following the
23 completion of remediation of submerged lands immediately
24 adjacent to the Pier 70 area, or at any other time that the
25 commission determines it is in the best interest of the state, the
26 port and commission shall reasonably cooperate in taking all
27 necessary actions to impress or confirm the public trust and the
28 Burton Act Trust on those submerged lands or portions of these
29 lands.

30 (d) For purposes of effectuating the exchange authorized by this
31 section, the commission is authorized to do all of the following:

32 (1) Receive and accept on behalf of the state any lands or interest
33 in lands conveyed to the state by the parties to the exchange
34 agreement, including lands that are now and will remain subject
35 to the public trust and the Burton Act trust.

36 (2) Convey by patent all of the right, title, and interest of the
37 state in lands that are to be free of the public trust upon completion
38 of an exchange of lands as authorized by this act and as approved
39 by the commission.

1 (3) Convey to the city by patent all of the right, title, and interest
2 of the state in lands that are to be subject to the public trust and
3 the Burton Act trust upon completion of an exchange of lands as
4 authorized by this act and as approved by the commission, subject
5 to the terms, conditions, and reservations as the commission may
6 determine are necessary to meet the requirements of this act.

7 (e) The exchange authorized by this section may include lands
8 outside of the Pier 70 area to the extent consistent with the purposes
9 of this act and approved by the commission. Lands outside the
10 Pier 70 area that are impressed with the public trust and the Burton
11 Act trust as part of an exchange authorized by this act shall be
12 deemed trust lands for purposes of this act.

13 (f) This act does not condition or otherwise limit the authority
14 of the state or the city to undertake a trust exchange or other
15 conveyance authorized by any other law.

16 SEC. 4. The precise boundaries of the lands to be taken out of
17 the trust and the lands to be put into the trust pursuant to the
18 exchange shall be determined by the port, subject to the approval
19 of the commission. The commission is authorized to settle by
20 agreement with the port any disputes as to the location of the mean
21 high tide line in its last natural state, the boundaries of tidelands
22 conveyed into private ownership pursuant to various statutes, and
23 any other boundary lines that the commission deems necessary to
24 effectuate the exchange.

25 SEC. 5. All lands exchanged into the trust under this act shall
26 be held by the port subject to the public trust and the Burton Act
27 trust, and all lands exchanged out of the trust under this section
28 shall be free of the public trust and the Burton Act trust.

29 SEC. 6. (a) For so long as the port holds title to the trust
30 termination lands, those lands shall be held as assets of the public
31 trust, free of any public trust or Burton Act trust use or alienation
32 restrictions, but subject to the requirements of this section.

33 (b) The port may hold, use, conduct, operate, maintain, manage,
34 administer, regulate, improve, sell, lease, encumber, and control
35 the trust termination lands and any buildings and improvements
36 on the lands, for any purpose, whether or not consistent with the
37 trust, subject to the requirements of this section.

38 (c) Any revenues or other proceeds received by the port from
39 the trust termination lands shall be deposited in the harbor fund.

1 (d) The port shall receive fair market value for the lease or sale
2 of any trust termination lands or interest in the lands.

3 (e) The port may expend moneys in the harbor fund in
4 connection with the trust termination lands for the following limited
5 purposes:

6 (1) The operation, maintenance, management, and administration
7 of those trust termination lands under port ownership and any
8 buildings, structures, or improvements on those lands if any lease
9 by the port of trust termination lands with a term of 30 or more
10 years requires the port's lessee to undertake the operation,
11 maintenance, management, and administration of the lease
12 premises.

13 (2) The preservation, rehabilitation, restoration, or reconstruction
14 of any historic building on trust termination lands in a manner
15 consistent with the Secretary's Standards, for so long as the
16 building remains in port ownership.

17 (3) Securing or servicing bond or other indebtedness incurred
18 for the improvement or construction of streets, utilities, or other
19 infrastructure or public facilities that serve the Pier 70 area and
20 are located on trust termination lands or on lands immediately
21 adjacent to the Pier 70 area.

22 (4) Planning, investigation, design, administrative review, and
23 entitlement work associated with the development of the Pier 70
24 area.

25 SEC. 7. (a) Historic buildings situated on trust lands may be
26 used or leased for purposes that are not otherwise consistent with
27 the public trust or the Burton Act trust if all of the following
28 requirements are met:

29 (1) The buildings are rehabilitated consistent with the Secretary's
30 Standards.

31 (2) The uses or leases provide for public access to view the
32 interior and exterior historic architectural amenities and other
33 amenities that educate the public about the historic buildings and
34 their contribution to the maritime history of Pier 70.

35 (3) The executive officer of the commission makes a written
36 finding that trust uses available could not feasibly provide sufficient
37 funds for the restoration and preservation of the building and that
38 the uses or leases are part of an overall program that further trust
39 purposes.

(b) If a building described in subdivision (a) is used for a nontrust purpose, and is remodeled, renovated, or used in a manner that is inconsistent with the Secretary's Standards, the building shall be put to a trust use from the commencement of the inconsistent remodel, renovation, or use, unless the continued nontrust use is otherwise authorized under the Burton Act.

(c) If a building described in subdivision (a) is demolished, subsequent use of the land and any replacement structure shall be consistent with the public trust and the Burton Act trust.

(d) Notwithstanding subdivisions (a), (b), and (c), this section does not limit the port's authority under Section 3 of the Burton Act.

SEC. 8. The Legislature further finds and declares all of the following:

(a) The purpose of this act is also to facilitate the port's implementation of its waterfront land use plan, its capital plan, and the host agreement, subject to required environmental review.

(b) The San Francisco waterfront is a valuable public trust asset of the state that provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state. Deferred maintenance since 1969 has caused deteriorating conditions along the San Francisco waterfront, which has limited the port's ability to fully implement its waterfront land use plan.

(c) Pursuant to the San Francisco Administrative Code, the port has developed a capital plan identifying projects necessary and convenient to the improvement, operation, and conduct of the city's waterfront. Projects in the capital plan include the following:

(1) Seismic and life-safety improvements to existing buildings and other structures.

(2) Rehabilitation, restoration, and preservation of certain historic piers and other historic structures.

(3) Structural repairs and improvements to piers, seawalls, and wharves.

(4) Remediation of hazardous materials.

(5) Stormwater management facilities.

(6) Other utility infrastructure.

(7) Public access improvements, including improvements within and around the pier sheds and the construction of waterfront plazas and open space.

1 (d) The estimated cost to implement the port's capital plan is
2 approximately \$2.17 billion in 2011 dollars. This amount
3 substantially exceeds the projected revenues of the port available
4 for these purposes.

5 (e) Providing additional mechanisms to finance capital
6 improvements to the port's facilities in furtherance of the capital
7 plan and waterfront land use plan is a matter of statewide
8 importance that will further the purposes of both the public trust
9 and the Burton Act trust.

10 (f) In February 2010, the BMW Oracle racing team, sailing
11 under the burgee of the Golden Gate Yacht Club, won the 33rd
12 America's Cup off the coast of Valencia, Spain. The America's
13 Cup, which was first awarded in 1851, is the oldest sporting trophy
14 in sailing history. On December 31, 2010, the team designated the
15 city to host the AC34 events. The team has designated as the
16 potential venue for AC34 the San Francisco waterfront area
17 generally between the Golden Gate Bridge to the north and Pier
18 80 to the south. The team anticipates holding the AC34 match in
19 the San Francisco Bay in 2013, with preliminary races worldwide
20 beginning in 2011 and in the San Francisco Bay in 2012. The city
21 is conducting environmental review of the AC34 match,
22 preregattas, and related activities.

23 (g) An economic impact study by the Bay Area Council's
24 Economic Institute and Beacon Economics released in July 2010
25 concludes that hosting AC34 on the San Francisco Bay would
26 generate nearly 9,000 jobs and \$1.4 billion in direct spending in
27 the San Francisco Bay area and California, and nearly \$1.9 billion
28 nationwide. The study reports that the America's Cup is the world's
29 third largest sporting competition after the Olympics and soccer's
30 World Cup.

31 (h) Under the host agreement, the city has agreed to provide the
32 team with venues for regattas, team and competitor facilities,
33 sponsorship activities, spectator viewing, and ancillary activities,
34 subject to completion of environmental review and review and
35 approval of the planned facilities for the event. The venues are
36 likely to be located on water areas, piers and wharves, and
37 waterfront and landside property under port jurisdiction, generally
38 from the Golden Gate Bridge to Pier 80. If the project is approved,
39 the Event Authority will make capital improvements to certain
40 venues, subject to the port's approval, which will correct

1 deteriorated facility conditions and increase public access to, and
2 use and enjoyment of, trust lands.

3 (i) In Senate Bill 815, the Legislature found that certain lands
4 within port jurisdiction, including seawall lot 330, have become
5 separated from the San Francisco Bay by the Embarcadero
6 roadway, were further cut off from the water by light rail tracks
7 that were constructed in the median of the roadway, have ceased
8 to be useful for the promotion of the public trust and the Burton
9 Act trust except for the production of revenue to support the
10 purposes of the Burton Act trust, are leased on an interim basis for
11 commuter parking or are vacant land, and constitute in the
12 aggregate approximately 4 percent of the lands granted to the city
13 under the Burton Act, not including lands currently subject to tidal
14 action.

15 (j) Based on those findings, the Legislature concluded, inter
16 alia, that seawall lot 330 was filled and reclaimed as part of a highly
17 beneficial plan of harbor development, has ceased to be tidelands,
18 constitutes a relatively small portion of the tidelands granted to
19 the city, and is not necessary for public trust or Burton Act trust
20 purposes. Accordingly, the Legislature freed seawall lot 330 from
21 the use requirements of the public trust and the Burton Act trust
22 through the year 2094. The Legislature further authorized the port
23 to enter into nontrust leases for seawall lot 330 for periods of up
24 to 75 years.

25 (k) The host agreement provides that if the project is approved,
26 in consideration of the Event Authority's capital investment in
27 port facilities, the port will offer the Event Authority certain
28 long-term development rights on port lands equal in value to the
29 Event Authority's investment in the venues. The long-term
30 development rights include the sale of seawall lot 330, following
31 the removal of that parcel from the public trust. The host agreement
32 further provides that the sale of seawall lot 330 be for fair market
33 value, to be determined based on a prescribed appraisal process
34 and indexed annually at 3 percent until title is transferred.

35 (l) The Legislature hereby finds and declares that, based on the
36 findings made in this act and the findings previously made in
37 Senate Bill 815, all of the conditions for terminating the public
38 trust as set forth by the California Supreme Court in *City of Long*
39 *Beach v. Mansell* (1970) 3 Cal.3d 462 have been met as to seawall
40 lot 330. The Legislature further finds and declares that seawall lot

1 330 is not needed for any trust use for the foreseeable future, that
2 the residual value to the trust of reserving seawall lot 330 for trust
3 uses after the year 2094 is minimal, and that allowing the port to
4 obtain a major investment in waterfront improvements to address
5 its critical capital needs through the sale of seawall lot 330 would
6 provide substantially greater benefit to the trust. The Legislature
7 further finds and declares that placing the trust on lands not
8 currently subject to the trust that are situated on or adjacent to the
9 San Francisco Bay in the manner required by this act would provide
10 substantially greater benefit to the trust than would reserving the
11 seawall lot 330 for trust uses after the year 2094.

12 SEC. 9. (a) Based on the foregoing findings, the Legislature
13 hereby declares seawall lot 330 to be free of the public trust and
14 the Burton Act trust in perpetuity, and further declares that seawall
15 lot 330 has ceased to be tidelands for purposes of Section 3 of
16 Article X of the California Constitution.

17 (b) All of the state's right, title and interest in seawall lot 330
18 is hereby granted, free of the public trust and the Burton Act trust,
19 to the port. The port shall hold seawall lot 330 as an asset of the
20 trust, free of any public trust or Burton Act trust use or alienation
21 restrictions, but subject to the requirement that all revenues or
22 other proceeds generated on seawall lot 330 be deposited in the
23 harbor fund and used for trust purposes. The port may, on behalf
24 of the state, convey seawall lot 330 or any interest in seawall lot
25 330 to any person, free of the public trust and the Burton Act trust,
26 if the consideration received by the port is equal to or greater than
27 the fair market value of the land or interest conveyed and is used
28 by the port for trust purposes.

29 (c) The consideration received by the port, or any portion of the
30 consideration, may be in the form of improvements to a venue or
31 to other property within the port's jurisdiction and subject to the
32 trust, if, prior to the transfer of title, the commission has found that
33 either the improvement work has been completed or the purchaser
34 has secured the cost of completing the work by a performance
35 bond, cash deposit, letter of credit, promissory note secured by a
36 deed of trust on the property, or comparable security.

37 (d) Transfer of the fee interest in seawall lot 330 in accordance
38 with the terms of the host agreement as it existed on its effective
39 date, and based on the fair market value of seawall lot 330 as
40 determined by the port, shall be deemed to satisfy the requirements

1 of this section. However, as a condition of any transfer of the fee
2 interest, the commission shall review the appraisals used by the
3 port in determining the fair market value of seawall lot 330 for
4 conformance with the Uniform Standards of Professional Appraisal
5 Practice and approve the valuation methodologies used in the
6 appraisals. If the transfer of the fee interest in seawall lot 330 does
7 not occur by June 30, 2012, the port's determination of the fair
8 market value of seawall lot 330 shall be subject to further review
9 and approval by the commission.

10 (e) As a condition of any transfer of the fee interest in seawall
11 lot 330, the port shall be obligated to cause the trust to be impressed
12 upon lands situated on or adjacent to the San Francisco Bay that
13 have a total area equal to or greater than the area of seawall lot
14 330 and have been determined by the commission to be useful for
15 trust purposes. The lands to be impressed with the trust shall be
16 identified by the port and approved by the commission prior to the
17 transfer of title to seawall lot 330, and the port shall cause the trust
18 to be impressed upon those lands within a reasonable period of
19 time thereafter, as determined by the commission.

20 (f) This section supersedes the requirements of the Burton Act
21 and Senate Bill 815 to the extent that they apply to seawall lot 330.

22 SEC. 10. This act advances the statewide purpose of the public
23 trust and is in the best interests of the people of this state. An
24 agreement for the sale, lease, or exchange of port property or other
25 agreement made under this act is hereby found to be of statewide
26 significance and importance. Therefore, an ordinance, charter
27 provision, or other provision of local law that is inconsistent with
28 this act does not apply to that sale, lease, exchange, or other
29 agreement.

30 SEC. 11. (a) Notwithstanding any other law, the requirements
31 of subdivision (f) of Section 10310 of Title 14 of the California
32 Code of Regulations shall be deemed satisfied for any Pier 70
33 development project requiring a BCDC permit if the city submits
34 in a form acceptable to BCDC an approved development and
35 disposition agreement for the project ~~that is consistent with an~~
36 ~~approved financial and land use plan for the Pier 70 area as~~
37 ~~permitted under Charter Section B7.310; and final city approval~~
38 *of all necessary amendments to the city's general plan, planning*
39 *code, and zoning maps.*

1 (b) This section does not affect BCDC's jurisdiction and
2 authority or its discretion to approve, disapprove, or condition a
3 permit application subject to this section in accordance with
4 applicable law.

5 SEC. 12. A deed, patent, agreement, or other instrument
6 executed in furtherance of this act, or an action of the state or port
7 to approve the use, lease, or conveyance of a state or port property
8 subject to this act, or any portion of that property, or to approve
9 project agreements, grant entitlements, or permits, or issue bonds
10 or other indebtedness in connection with the use and development
11 of that property, shall be conclusively presumed to be valid unless
12 held to be invalid in an appropriate proceeding in a court of
13 competent jurisdiction to determine the validity of the agreement
14 commenced within 60 days after the recording of the agreement.

15 SEC. 13. (a) An action may be brought under Chapter 4
16 (commencing with Section 760.010) of Title 10 of Part 2 of the
17 Code of Civil Procedure to establish title to any lands conveyed
18 pursuant to this act or by the parties to any agreement entered into
19 pursuant to this act to confirm the validity of the agreement.
20 Notwithstanding Section 764.080 of the Code of Civil Procedure,
21 the statement of decision in the action shall include a recitation of
22 the underlying facts and a determination as to whether the
23 conveyance or agreement meets the requirements of this act,
24 Sections 3 and 4 of Article X of the California Constitution, if
25 applicable, and any other law applicable to the validity of the
26 agreement.

27 (b) For purposes of Section 764.080 of the Code of Civil
28 Procedure and unless otherwise agreed in writing, an agreement
29 entered into pursuant to this act shall be deemed to be entered into
30 on the date it is executed by the executive officer of the
31 commission, who shall be the last of the parties to sign prior to the
32 signature of the Governor. The effective date of the agreement
33 shall be deemed to be the date on which it is executed by the
34 Governor pursuant to Section 6107 of the Public Resources Code.

35 (c) An action may be brought under Chapter 9 (commencing
36 with Section 860) of Title 10 of Part 2 of the Code of Civil
37 Procedure to determine the legality and validity of a deed, patent,
38 agreement, or other instrument executed in furtherance of or
39 authorized by this act, or an action of the port to use, lease, or
40 convey any property, or to approve project agreements, grant

1 entitlements or permits, or issue bonds or other indebtedness in
2 connection with the use and development of that property. Prior
3 to the filing of an action, the Attorney General and the executive
4 officer of the commission shall be provided written notice of the
5 action and a copy of the complaint. An action authorized by this
6 subdivision may be combined with an action authorized by
7 subdivision (a).

8 SEC. 14. If a provision of this act, or its application to a person,
9 property, or circumstance, is held invalid by a court, the invalidity
10 or inapplicability of that provision shall not affect any other
11 provision of this act or the application of that provision to any
12 other person, property, or circumstance, and the remaining portions
13 of this act shall continue in full force and effect, unless enforcement
14 of this act as so modified by and in response to that invalidation
15 would be grossly inequitable under all of the circumstances, or
16 would frustrate the fundamental purposes of this act.

17 SEC. 15. Except as expressly provided herein, this act prevails
18 over any inconsistent provisions of the Burton Act or the Burton
19 Act transfer agreement.

20 SEC. 16. The Legislature finds and declares that a special law
21 is necessary and that a general law cannot be made applicable
22 within the meaning of Section 16 of Article IV of the California
23 Constitution because of the unique circumstances applicable only
24 to the lands described in this act.